



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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26-ORD-136

March 30, 2026

In re: Melanie Barker/Finance and Administration Cabinet

**Summary:** The Finance and Administration Cabinet (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it could not provide a record that is not in its possession, custody, or control.

### *Open Records Decision*

Melanie Barker (“the Appellant”) submitted a request to the Cabinet for “the record (DOA-28A REV 03/2023) for This Kentucky Governor Andy Beshear – Out of Country Trip to Davos (Switzerland) in 2026.” In a timely response, the Cabinet stated it had conducted “a diligent review [but] was unable to locate any records responsive to [the Appellant’s] request because it does not maintain the records [she] requested.” The Cabinet provided the name and address of the records custodian for the Kentucky State Police, which it stated “may be in possession of records responsive to [her] request.” This appeal followed.

A public agency “is responsible only for those records within its own custody or control.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)). Once a public agency states affirmatively that it does not possess the requested record, the burden shifts to the requester to make a *prima facie* case that the record exists in the agency’s possession, custody, or control. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that the agency does or should possess the record, “then the agency may also be called upon to prove that its search was adequate.” *City of Fort Thomas*, 406 S.W.3d at 848 n.3 (citing *Bowling*, 172 S.W.3d at 341). A requester must provide some evidence to make a *prima facie* case that requested records exist, such as a statute or regulation requiring the creation of the requested record or other factual support for the existence of the record. See, e.g., 21-ORD-177; 11-ORD-074. A requester’s bare assertion that certain records should exist is insufficient to make a *prima facie* case that the records actually do exist in the possession, custody, or control of the agency. See, e.g., 22-ORD-040.

Here, the Appellant quotes 200 KAR 2:006 § 10(1)(c), which requires a “person” to use “a Request for Authorization of Out-of-Country Travel document” to “request prior authorization or reimbursement for travel.” The regulation, however, does not designate the Cabinet as the custodian of all such records. Thus, the Appellant has not made a *prima facie* case that the requested records are within the Cabinet’s possession, custody, or control. Because the Cabinet does not possess the requested record, and advised the Appellant of the person it believed to be the custodian of that record,<sup>1</sup> the Cabinet did not violate the Act.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

**Russell Coleman**  
Attorney General

/s/ James M. Herrick  
James M. Herrick  
Assistant Attorney General

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Distributed to:

Ms. Melanie Barker  
Barbara K. Dickens, Esq.  
Ms. Laura Sharp

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<sup>1</sup> See KRS 61.872(4) (“If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.”).